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HOUSE BILL 1108

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State of Washington

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By Representatives Kagi, Haler, Kessler, McDonald, Moeller, Morrell, Hankins, Dunshee, McCoy, Ormsby, Hudgins, Sells, Haigh, Kenney, Springer and Wallace

Read first time 01/10/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to visitation rights for grandparents; amending RCW  
2 26.09.004 and 26.10.160; adding a new section to chapter 26.09 RCW;  
3 creating a new section; and repealing RCW 26.09.240.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature recognizes that the recent  
6 Washington State Supreme Court decision in *In re Parentage of C.A.M.A.*  
7 reaffirmed that Washington's grandparent visitation statutes are  
8 unconstitutional. It is the intent of the legislature to bring the law  
9 in line with the court's holding in that case, in order to ensure that  
10 grandparents have a viable means of petitioning the court for  
11 visitation with their grandchildren.

12 **Sec. 2.** RCW 26.09.004 and 1987 c 460 s 3 are each amended to read  
13 as follows:

14 The definitions in this section apply throughout this chapter.

15 (1) "Temporary parenting plan" means a plan for parenting of the  
16 child pending final resolution of any action for dissolution of  
17 marriage, declaration of invalidity, or legal separation which is  
18 incorporated in a temporary order.

1 (2) "Permanent parenting plan" means a plan for parenting the  
2 child, including allocation of parenting functions, which plan is  
3 incorporated in any final decree or decree of modification in an action  
4 for dissolution of marriage, declaration of invalidity, or legal  
5 separation.

6 (3) "Parenting functions" means those aspects of the parent-child  
7 relationship in which the parent makes decisions and performs functions  
8 necessary for the care and growth of the child. Parenting functions  
9 include:

10 (a) Maintaining a loving, stable, consistent, and nurturing  
11 relationship with the child;

12 (b) Attending to the daily needs of the child, such as feeding,  
13 clothing, physical care and grooming, supervision, health care, and day  
14 care, and engaging in other activities which are appropriate to the  
15 developmental level of the child and that are within the social and  
16 economic circumstances of the particular family;

17 (c) Attending to adequate education for the child, including  
18 remedial or other education essential to the best interests of the  
19 child;

20 (d) Assisting the child in developing and maintaining appropriate  
21 interpersonal relationships;

22 (e) Exercising appropriate judgment regarding the child's welfare,  
23 consistent with the child's developmental level and the family's social  
24 and economic circumstances; and

25 (f) Providing for the financial support of the child.

26 (4) "Grandparent" means a person who is the parent of a child's  
27 father or mother, who is related to the child by blood, in whole or by  
28 half, adoption, or marriage.

29 NEW SECTION. Sec. 3. A new section is added to chapter 26.09 RCW  
30 to read as follows:

31 (1)(a) A grandparent may petition the court for visitation with a  
32 child one time regardless of whether there is a pending dissolution,  
33 legal separation, or modification of a parenting plan proceeding.

34 (b) A grandparent may file a subsequent petition if the grandparent  
35 can prove that a substantial change in circumstances has occurred. If  
36 the court finds good cause to allow the grandparent to file more than  
37 one time, the court shall allow the filing and consider the petition.

1 A death or incapacitation of a parent that occurs subsequent to any  
2 petition is a substantial change in circumstances, which would permit  
3 a grandparent to file an additional petition requesting visitation with  
4 the child.

5 (2) In order to proceed, the court must find that the grandparent  
6 has met its burden of proving standing. In order to have standing, a  
7 grandparent must prove the following:

8 (a) The applicant is a grandparent who has a significant  
9 relationship with the child. To satisfy this criterion, the applicant  
10 must show that:

11 (i) His or her relationship with the child has been significant in  
12 nature for a substantial period of time;

13 (ii) A parent or custodian of the child consented to or allowed the  
14 formation and establishment of the relationship, or the relationship  
15 was formed as a result of the unavailability or inability of any legal  
16 parent to perform caretaking functions; and

17 (iii) His or her relationship with the child is beneficial;

18 (b) A parent or custodian has substantially interfered with the  
19 grandparent's relationship with the child, and the grandparent has  
20 unsuccessfully tried to resolve any disagreement with the parent or  
21 custodian before going to court; and

22 (c) The child would likely suffer harm or the substantial risk of  
23 harm if contact between the grandparent and the child is not awarded.

24 (3) If the court finds that all of the conditions in subsection (2)  
25 of this section are satisfied, then the court shall consider a fit  
26 parent's reasons for denying visitation, determining whether they are  
27 reasonable and in the best interest of the child in light of the  
28 deference given to a fit parent's decisions.

29 (4) The court shall order visitation if it finds by clear and  
30 convincing evidence that the child would suffer harm or the substantial  
31 risk of harm if contact between the grandparent and the child is not  
32 awarded and that denial of contact is unreasonable and not in the  
33 child's best interest. In making this determination, the court shall  
34 consider the following, nonexclusive factors:

35 (a) The love, affection, and strength of the relationship between  
36 the child and the grandparent;

37 (b) The length and quality of the prior relationship between the

1 child and the grandparent, including the role performed by the  
2 grandparent and the emotional ties that existed between the child and  
3 the grandparent;

4 (c) The relationship between each of the child's parents or the  
5 person with whom the child is residing and the petitioner;

6 (d) The nature and reason for either parent's objection to granting  
7 the petitioner visitation;

8 (e) The effect that granting visitation will have on the  
9 relationship between the child and the child's parents or the person  
10 with whom the child is residing;

11 (f) The residential time-sharing arrangements between the parents;

12 (g) The good faith of the petitioner;

13 (h) Any history of physical, emotional, or sexual abuse or neglect  
14 of the child by the grandparent;

15 (i) The child's reasonable preference, if the court considers the  
16 child to be of sufficient age to express a preference; and

17 (j) Any other factor relevant to the child's best interest.

18 (5) Any contact ordered by the court shall be subject to the  
19 limitations set forth in RCW 26.10.160. Visitation shall be limited if  
20 a parent or custodian presents evidence that could allow a reasonable  
21 fact-finder to conclude that the grandparent or grandparents seeking  
22 visitation have engaged in any of the conduct outlined in RCW  
23 26.10.160(2)(a).

24 **Sec. 4.** RCW 26.10.160 and 2004 c 38 s 13 are each amended to read  
25 as follows:

26 (1) A parent not granted custody of the child is entitled to  
27 reasonable visitation rights except as provided in subsection (2) of  
28 this section.

29 (2)(a) Visitation with the child shall be limited if it is found  
30 that the parent seeking visitation has engaged in any of the following  
31 conduct: (i) Willful abandonment that continues for an extended period  
32 of time or substantial refusal to perform parenting functions; (ii)  
33 physical, sexual, or a pattern of emotional abuse of a child; (iii) a  
34 history of acts of domestic violence as defined in RCW 26.50.010(1) or  
35 an assault or sexual assault which causes grievous bodily harm or the  
36 fear of such harm; or (iv) the parent has been convicted as an adult of  
37 a sex offense under:

1 (A) RCW 9A.44.076 if, because of the difference in age between the  
2 offender and the victim, no rebuttable presumption exists under (d) of  
3 this subsection;

4 (B) RCW 9A.44.079 if, because of the difference in age between the  
5 offender and the victim, no rebuttable presumption exists under (d) of  
6 this subsection;

7 (C) RCW 9A.44.086 if, because of the difference in age between the  
8 offender and the victim, no rebuttable presumption exists under (d) of  
9 this subsection;

10 (D) RCW 9A.44.089;

11 (E) RCW 9A.44.093;

12 (F) RCW 9A.44.096;

13 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age  
14 between the offender and the victim, no rebuttable presumption exists  
15 under (d) of this subsection;

16 (H) Chapter 9.68A RCW;

17 (I) Any predecessor or antecedent statute for the offenses listed  
18 in (a)(iv)(A) through (H) of this subsection;

19 (J) Any statute from any other jurisdiction that describes an  
20 offense analogous to the offenses listed in (a)(iv)(A) through (H) of  
21 this subsection.

22 This subsection (2)(a) shall not apply when (c) or (d) of this  
23 subsection applies.

24 (b) The parent's visitation with the child shall be limited if it  
25 is found that the parent resides with a person who has engaged in any  
26 of the following conduct: (i) Physical, sexual, or a pattern of  
27 emotional abuse of a child; (ii) a history of acts of domestic violence  
28 as defined in RCW 26.50.010(1) or an assault or sexual assault that  
29 causes grievous bodily harm or the fear of such harm; or (iii) the  
30 person has been convicted as an adult or as a juvenile has been  
31 adjudicated of a sex offense under:

32 (A) RCW 9A.44.076 if, because of the difference in age between the  
33 offender and the victim, no rebuttable presumption exists under (e) of  
34 this subsection;

35 (B) RCW 9A.44.079 if, because of the difference in age between the  
36 offender and the victim, no rebuttable presumption exists under (e) of  
37 this subsection;

1 (C) RCW 9A.44.086 if, because of the difference in age between the  
2 offender and the victim, no rebuttable presumption exists under (e) of  
3 this subsection;

4 (D) RCW 9A.44.089;

5 (E) RCW 9A.44.093;

6 (F) RCW 9A.44.096;

7 (G) RCW 9A.64.020 (1) or (2) if, because of the difference in age  
8 between the offender and the victim, no rebuttable presumption exists  
9 under (e) of this subsection;

10 (H) Chapter 9.68A RCW;

11 (I) Any predecessor or antecedent statute for the offenses listed  
12 in (b)(iii)(A) through (H) of this subsection;

13 (J) Any statute from any other jurisdiction that describes an  
14 offense analogous to the offenses listed in (b)(iii)(A) through (H) of  
15 this subsection.

16 This subsection (2)(b) shall not apply when (c) or (e) of this  
17 subsection applies.

18 (c) If a parent has been found to be a sexual predator under  
19 chapter 71.09 RCW or under an analogous statute of any other  
20 jurisdiction, the court shall restrain the parent from contact with a  
21 child that would otherwise be allowed under this chapter. If a parent  
22 resides with an adult or a juvenile who has been found to be a sexual  
23 predator under chapter 71.09 RCW or under an analogous statute of any  
24 other jurisdiction, the court shall restrain the parent from contact  
25 with the parent's child except contact that occurs outside that  
26 person's presence.

27 (d) There is a rebuttable presumption that a parent who has been  
28 convicted as an adult of a sex offense listed in (d)(i) through (ix) of  
29 this subsection poses a present danger to a child. Unless the parent  
30 rebuts this presumption, the court shall restrain the parent from  
31 contact with a child that would otherwise be allowed under this  
32 chapter:

33 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted  
34 was at least five years older than the other person;

35 (ii) RCW 9A.44.073;

36 (iii) RCW 9A.44.076, provided that the person convicted was at  
37 least eight years older than the victim;

1 (iv) RCW 9A.44.079, provided that the person convicted was at least  
2 eight years older than the victim;  
3 (v) RCW 9A.44.083;  
4 (vi) RCW 9A.44.086, provided that the person convicted was at least  
5 eight years older than the victim;  
6 (vii) RCW 9A.44.100;  
7 (viii) Any predecessor or antecedent statute for the offenses  
8 listed in (d)(i) through (vii) of this subsection;  
9 (ix) Any statute from any other jurisdiction that describes an  
10 offense analogous to the offenses listed in (d)(i) through (vii) of  
11 this subsection.  
12 (e) There is a rebuttable presumption that a parent who resides  
13 with a person who, as an adult, has been convicted, or as a juvenile  
14 has been adjudicated, of the sex offenses listed in (e)(i) through (ix)  
15 of this subsection places a child at risk of abuse or harm when that  
16 parent exercises visitation in the presence of the convicted or  
17 adjudicated person. Unless the parent rebuts the presumption, the  
18 court shall restrain the parent from contact with the parent's child  
19 except for contact that occurs outside of the convicted or adjudicated  
20 person's presence:  
21 (i) RCW 9A.64.020 (1) or (2), provided that the person convicted  
22 was at least five years older than the other person;  
23 (ii) RCW 9A.44.073;  
24 (iii) RCW 9A.44.076, provided that the person convicted was at  
25 least eight years older than the victim;  
26 (iv) RCW 9A.44.079, provided that the person convicted was at least  
27 eight years older than the victim;  
28 (v) RCW 9A.44.083;  
29 (vi) RCW 9A.44.086, provided that the person convicted was at least  
30 eight years older than the victim;  
31 (vii) RCW 9A.44.100;  
32 (viii) Any predecessor or antecedent statute for the offenses  
33 listed in (e)(i) through (vii) of this subsection;  
34 (ix) Any statute from any other jurisdiction that describes an  
35 offense analogous to the offenses listed in (e)(i) through (vii) of  
36 this subsection.  
37 (f) The presumption established in (d) of this subsection may be  
38 rebutted only after a written finding that:

1 (i) If the child was not the victim of the sex offense committed by  
2 the parent requesting visitation, (A) contact between the child and the  
3 offending parent is appropriate and poses minimal risk to the child,  
4 and (B) the offending parent has successfully engaged in treatment for  
5 sex offenders or is engaged in and making progress in such treatment,  
6 if any was ordered by a court, and the treatment provider believes such  
7 contact is appropriate and poses minimal risk to the child; or

8 (ii) If the child was the victim of the sex offense committed by  
9 the parent requesting visitation, (A) contact between the child and the  
10 offending parent is appropriate and poses minimal risk to the child,  
11 (B) if the child is in or has been in therapy for victims of sexual  
12 abuse, the child's counselor believes such contact between the child  
13 and the offending parent is in the child's best interest, and (C) the  
14 offending parent has successfully engaged in treatment for sex  
15 offenders or is engaged in and making progress in such treatment, if  
16 any was ordered by a court, and the treatment provider believes such  
17 contact is appropriate and poses minimal risk to the child.

18 (g) The presumption established in (e) of this subsection may be  
19 rebutted only after a written finding that:

20 (i) If the child was not the victim of the sex offense committed by  
21 the person who is residing with the parent requesting visitation, (A)  
22 contact between the child and the parent residing with the convicted or  
23 adjudicated person is appropriate and that parent is able to protect  
24 the child in the presence of the convicted or adjudicated person, and  
25 (B) the convicted or adjudicated person has successfully engaged in  
26 treatment for sex offenders or is engaged in and making progress in  
27 such treatment, if any was ordered by a court, and the treatment  
28 provider believes such contact is appropriate and poses minimal risk to  
29 the child; or

30 (ii) If the child was the victim of the sex offense committed by  
31 the person who is residing with the parent requesting visitation, (A)  
32 contact between the child and the parent in the presence of the  
33 convicted or adjudicated person is appropriate and poses minimal risk  
34 to the child, (B) if the child is in or has been in therapy for victims  
35 of sexual abuse, the child's counselor believes such contact between  
36 the child and the parent residing with the convicted or adjudicated  
37 person in the presence of the convicted or adjudicated person is in the  
38 child's best interest, and (C) the convicted or adjudicated person has

1 successfully engaged in treatment for sex offenders or is engaged in  
2 and making progress in such treatment, if any was ordered by a court,  
3 and the treatment provider believes contact between the parent and  
4 child in the presence of the convicted or adjudicated person is  
5 appropriate and poses minimal risk to the child.

6 (h) If the court finds that the parent has met the burden of  
7 rebutting the presumption under (f) of this subsection, the court may  
8 allow a parent who has been convicted as an adult of a sex offense  
9 listed in (d)(i) through (ix) of this subsection to have visitation  
10 with the child supervised by a neutral and independent adult and  
11 pursuant to an adequate plan for supervision of such visitation. The  
12 court shall not approve of a supervisor for contact between the child  
13 and the parent unless the court finds, based on the evidence, that the  
14 supervisor is willing and capable of protecting the child from harm.  
15 The court shall revoke court approval of the supervisor upon finding,  
16 based on the evidence, that the supervisor has failed to protect the  
17 child or is no longer willing or capable of protecting the child.

18 (i) If the court finds that the parent has met the burden of  
19 rebutting the presumption under (g) of this subsection, the court may  
20 allow a parent residing with a person who has been adjudicated as a  
21 juvenile of a sex offense listed in (e)(i) through (ix) of this  
22 subsection to have visitation with the child in the presence of the  
23 person adjudicated as a juvenile, supervised by a neutral and  
24 independent adult and pursuant to an adequate plan for supervision of  
25 such visitation. The court shall not approve of a supervisor for  
26 contact between the child and the parent unless the court finds, based  
27 on the evidence, that the supervisor is willing and capable of  
28 protecting the child from harm. The court shall revoke court approval  
29 of the supervisor upon finding, based on the evidence, that the  
30 supervisor has failed to protect the child or is no longer willing or  
31 capable of protecting the child.

32 (j) If the court finds that the parent has met the burden of  
33 rebutting the presumption under (g) of this subsection, the court may  
34 allow a parent residing with a person who, as an adult, has been  
35 convicted of a sex offense listed in (e)(i) through (ix) of this  
36 subsection to have visitation with the child in the presence of the  
37 convicted person supervised by a neutral and independent adult and  
38 pursuant to an adequate plan for supervision of such visitation. The

1 court shall not approve of a supervisor for contact between the child  
2 and the parent unless the court finds, based on the evidence, that the  
3 supervisor is willing and capable of protecting the child from harm.  
4 The court shall revoke court approval of the supervisor upon finding,  
5 based on the evidence, that the supervisor has failed to protect the  
6 child or is no longer willing or capable of protecting the child.

7 (k) A court shall not order unsupervised contact between the  
8 offending parent and a child of the offending parent who was sexually  
9 abused by that parent. A court may order unsupervised contact between  
10 the offending parent and a child who was not sexually abused by the  
11 parent after the presumption under (d) of this subsection has been  
12 rebutted and supervised visitation has occurred for at least two years  
13 with no further arrests or convictions of sex offenses involving  
14 children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter 9.68A RCW  
15 and (i) the sex offense of the offending parent was not committed  
16 against a child of the offending parent, and (ii) the court finds that  
17 unsupervised contact between the child and the offending parent is  
18 appropriate and poses minimal risk to the child, after consideration of  
19 the testimony of a state-certified therapist, mental health counselor,  
20 or social worker with expertise in treating child sexual abuse victims  
21 who has supervised at least one period of visitation between the parent  
22 and the child, and after consideration of evidence of the offending  
23 parent's compliance with community supervision requirements, if any.  
24 If the offending parent was not ordered by a court to participate in  
25 treatment for sex offenders, then the parent shall obtain a  
26 psychosexual evaluation conducted by a certified sex offender treatment  
27 provider or a certified affiliate sex offender treatment provider  
28 indicating that the offender has the lowest likelihood of risk to  
29 reoffend before the court grants unsupervised contact between the  
30 parent and a child.

31 (l) A court may order unsupervised contact between the parent and  
32 a child which may occur in the presence of a juvenile adjudicated of a  
33 sex offense listed in (e)(i) through (ix) of this subsection who  
34 resides with the parent after the presumption under (e) of this  
35 subsection has been rebutted and supervised visitation has occurred for  
36 at least two years during which time the adjudicated juvenile has had  
37 no further arrests, adjudications, or convictions of sex offenses  
38 involving children under chapter 9A.44 RCW, RCW 9A.64.020, or chapter

1 9.68A RCW, and (i) the court finds that unsupervised contact between  
2 the child and the parent that may occur in the presence of the  
3 adjudicated juvenile is appropriate and poses minimal risk to the  
4 child, after consideration of the testimony of a state-certified  
5 therapist, mental health counselor, or social worker with expertise in  
6 treatment of child sexual abuse victims who has supervised at least one  
7 period of visitation between the parent and the child in the presence  
8 of the adjudicated juvenile, and after consideration of evidence of the  
9 adjudicated juvenile's compliance with community supervision or parole  
10 requirements, if any. If the adjudicated juvenile was not ordered by  
11 a court to participate in treatment for sex offenders, then the  
12 adjudicated juvenile shall obtain a psychosexual evaluation conducted  
13 by a certified sex offender treatment provider or a certified affiliate  
14 sex offender treatment provider indicating that the adjudicated  
15 juvenile has the lowest likelihood of risk to reoffend before the court  
16 grants unsupervised contact between the parent and a child which may  
17 occur in the presence of the adjudicated juvenile who is residing with  
18 the parent.

19 (m)(i) The limitations imposed by the court under (a) or (b) of  
20 this subsection shall be reasonably calculated to protect the child  
21 from the physical, sexual, or emotional abuse or harm that could result  
22 if the child has contact with the parent requesting visitation. If the  
23 court expressly finds based on the evidence that limitations on  
24 visitation with the child will not adequately protect the child from  
25 the harm or abuse that could result if the child has contact with the  
26 parent requesting visitation, the court shall restrain the person  
27 seeking visitation from all contact with the child.

28 (ii) The court shall not enter an order under (a) of this  
29 subsection allowing a parent to have contact with a child if the parent  
30 has been found by clear and convincing evidence in a civil action or by  
31 a preponderance of the evidence in a dependency action to have sexually  
32 abused the child, except upon recommendation by an evaluator or  
33 therapist for the child that the child is ready for contact with the  
34 parent and will not be harmed by the contact. The court shall not  
35 enter an order allowing a parent to have contact with the child in the  
36 offender's presence if the parent resides with a person who has been  
37 found by clear and convincing evidence in a civil action or by a  
38 preponderance of the evidence in a dependency action to have sexually

1 abused a child, unless the court finds that the parent accepts that the  
2 person engaged in the harmful conduct and the parent is willing to and  
3 capable of protecting the child from harm from the person.

4 (iii) If the court limits visitation under (a) or (b) of this  
5 subsection to require supervised contact between the child and the  
6 parent, the court shall not approve of a supervisor for contact between  
7 a child and a parent who has engaged in physical, sexual, or a pattern  
8 of emotional abuse of the child unless the court finds based upon the  
9 evidence that the supervisor accepts that the harmful conduct occurred  
10 and is willing to and capable of protecting the child from harm. The  
11 court shall revoke court approval of the supervisor upon finding, based  
12 on the evidence, that the supervisor has failed to protect the child or  
13 is no longer willing to or capable of protecting the child.

14 (n) If the court expressly finds based on the evidence that  
15 contact between the parent and the child will not cause physical,  
16 sexual, or emotional abuse or harm to the child and that the  
17 probability that the parent's or other person's harmful or abusive  
18 conduct will recur is so remote that it would not be in the child's  
19 best interests to apply the limitations of (a), (b), and (m)(i) and  
20 (iii) of this subsection, or if the court expressly finds that the  
21 parent's conduct did not have an impact on the child, then the court  
22 need not apply the limitations of (a), (b), and (m)(i) and (iii) of  
23 this subsection. The weight given to the existence of a protection  
24 order issued under chapter 26.50 RCW as to domestic violence is within  
25 the discretion of the court. This subsection shall not apply when (c),  
26 (d), (e), (f), (g), (h), (i), (j), (k), (l), and (m)(ii) of this  
27 subsection apply.

28 ~~(3) ((Any person may petition the court for visitation rights at~~  
29 ~~any time including, but not limited to, custody proceedings. The court~~  
30 ~~may order visitation rights for any person when visitation may serve~~  
31 ~~the best interest of the child whether or not there has been any change~~  
32 ~~of circumstances.~~

33 ~~(4))~~ The court may modify an order granting or denying visitation  
34 rights whenever modification would serve the best interests of the  
35 child. Modification of a parent's visitation rights shall be subject  
36 to the requirements of subsection (2) of this section.

37 ~~((5))~~ (4) For the purposes of this section, a parent's child  
38 means that parent's natural child, adopted child, or stepchild.

1        NEW SECTION.    **Sec. 5.**    RCW 26.09.240 (Visitation rights--Person  
2 other than parent--Grandparents' visitation rights) and 1996 c 177 s 1,  
3 1989 c 375 s 13, 1987 c 460 s 18, 1977 ex.s. c 271 s 1, & 1973 1st  
4 ex.s. c 157 s 24 are each repealed.

5        NEW SECTION.    **Sec. 6.**    If any provision of this act or its  
6 application to any person or circumstance is held invalid, the  
7 remainder of the act or the application of the provision to other  
8 persons or circumstances is not affected.

--- END ---